UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:15-cv-00582-MOC-DSC

LARRY M. STILES, TRUSTEE,)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
BRIAN T. BAIN)	
THE BAIN GROUP, PLLC)	
THE BAIN GROUP, LLC,)	
)	
Defendants.)	

THIS MATTER is before the court on defendants' Motion to Dismiss Complaint made pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure. The court has considered the Complaint¹ and the arguments of the parties and finds that the Trustee does have standing to bring the claims he has asserted, that pleading in the alternative or even inconsistently is expressly permitted under Rule 8(d)(2) &(d)(3), and that plaintiff has in the end asserted plausible claims.

Ashcroft v. Iqbal, 556 U.S. 662 (2009); Fed.R.Civ.P. 8(d). Having considered defendants' motion and reviewed the pleadings, the court enters the following Order.

The court notes that despite directing the Bankruptcy Court to transmit the record when the reference was withdrawn, <u>see</u> Order (#5), that instruction was overlooked and the Complaint did not appear in this court's docket at the time of consideration of the motion and does not appear to be annexed to any pleading. In considering the Motion to Dismiss, the court downloaded the Complaint from the Bankruptcy Court's docket (15-03160) via Pacer and has read the Complaint alongside the arguments of the respective parties.

ORDER

IT IS, THEREFORE, ORDERED that defendants' Motion to Dismiss Complaint (#6) made pursuant to Rule 12(b)(6) is **DENIED** for the reasons discussed herein and in plaintiff's Response. Defendants shall Answer the Complaint within 14 days of entry of this Order.

The Clerk of Court is instructed to transmit a copy of this Order to the Bankruptcy Clerk of Court.

Signed: May 18, 2016

Max O. Cogburn Ji

United States District Judge

-2-